ORIGINAL

96-8422

(2)

No. 96-

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

SILLASSE BRYAN,
Defendant-Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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B. Where trial witnesses testify to persistent drug usage, was it error to deny a request to instruct the jury upon its impact in evaluating witness credibility?

C. Was the law of conspiracy unlawfully enlarged by legal instructions permitting the jury to find an "overt act" neither charged in the indictment or further specified?

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IN THE
SUPREME COURT OF THE UNITED STATES
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SILLASSE BRYAN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

QUESTIONS PRESENTED

1. Should this Court resolve a split of decisional authority at the Circuit Court of Appeals level on whether a conviction for violation of 18 USC 922 (a)(1)(A) requires proof that Petitioner was aware of the requirement for, but dispensed firearms without benefit of a federal firearm dealers license?

2. Did trial Judge err in charging jury that it need only find that Petitioner acted "knowingly" and not "willfully" in trafficking in firearms without a federal firearms license by declining to instruct the jury that it must find that Petitioner knew he required a Federal firearms license?

3. Did trial Court's charge to jury err in not instructing jury, as requested, on effect of drug use on witness' credibility?

4. Did trial Court err in charging the jury that it could convict Petitioner of conspiracy for an "overt act" not charged in indictment, or further specified?

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES
AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

Petitioner SILLASSE BRYAN respectfully requests that a unit of certiorari issue to review a judgement of the United States Court for the Eastern District of New York affirming his convictions for conspiracy to distribute firearms without a firearms dealers license (18 U.S.C. 922 (a)(1)(A), 924 (a)(1)(D)) and a substantive count of same, and sentencing him to the custody and control of the Attorney General for a term of 57 months to be followed by a 3-year term of supervised release.

JURISDICTION

The mandate of the United States Court of Appeals was entered on or about March 6, 1997. This petition is timely filed.

STATUTORY PROVISIONS INVOLVED

Title 18 United States Code Section 922 (a)(1)(A) states:

> "It shall be unlawful for any person except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business or importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce;..."

Title 18 United States Code Section 371 states:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under title or imprisoned not more than 5 years, or both.
>
> If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

STATEMENT OF THE CASE

1. **Proceedings in the District Court**

Petitioner, SILLASSE BRYAN, of Brooklyn, New York was indicted by an Eastern District of New York Grand Jury for the crimes of conspiracy to distribute firearms without a federal firearms license (18 U.S.C. 371) and with a substantive violation of 18 U.S.C. 922 (a)(1)(A) involving handguns allegedly purchased in Columbus, Ohio by intermediary purchases (so called "Straw Purchasers") 53 year old Delores Marie Tillman and Nicole Bradley.

The firearms in issue were purchased from local gun shops upon presentation by the "straw purchaser" of a valid Ohio drivers license, and payment of the applicable sale price. The state of Ohio does not limit the number of weapons which can be purchased.

Delores Tillman, who testified under a cooperation agreement, acknowledged theft convictions in 1961, and 1989. In 1986 she began trafficking in drugs from her home, "moving" as much as a kilogram of drugs per week. She used drugs herself, including "crack" cocaine, beginning in 1986 for over half a decade. Following her arrest in 1996 for her role in gun trafficking she agreed to cooperate with the Government and entered into a "deferred prosecution" agreement with the Government. Her trial testimony, presumably credited by the jury, established the purchase of .380 Lorcin pistols utilizing a bogus photo identification bearing the name "Delores Kenzer."

The pistols were allegedly given to Petitioner in exchange for "300.00. The pistols were subsequently transported to New York and distributed here.

Nicole Bradley, the final "straw purchaser" purchased pistols utilizing her own name, but admittedly knowingly lied on the pistol purchase application with respect to her self-confessed addiction to drugs.[1] After the weapons were purchased, she gave them to Petitioner in exchange for money.

Ms. Bradley was not formally arrested on a complaint until February 4, 1996 (5 weeks prior to trial). In 1991 she was convicted of forgery. In 1993 she was arrested for theft, and sentenced, in turn, to serve an 18 month jail sentence. She ultimately served 4-6 months in the Court Jail.

Ms. Bradley pleaded guilty, and testified under a "cooperation agreement," to an information charging her with being an unlicensed gun dealer, in the hope of earning a "5-K" substantial assistance letter from the Government.

In addition to the testimony of the two "cooperators" the jury heard testimony that a search of Alcohol Tobacco and Firearms (A.T.F.) revealed Petitioner had no firearms license.

At the conclusion of the Government's case, Petitioner moved pursuant to Rule 29 for a directed verdict. The Petitioner did not testify in his own behalf.

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[1] She acknowledged using "crack" cocaine beginning at the end of 1992. She shoplifted and stole to generate cash to support her drug habit.

The sole defense witness was his mother Ernestine Bryan. She testified that Petitioner was learning impaired, and attended local public schools assigned to "Special Education" classes. He was never promoted beyond the 9th grade.

At the conclusion of the entire case, Petitioner unsuccessfully renewed his Rule 29 motion.

THE CHARGE CONFERENCE

Counsel requested that the Court specifically instruct the jury relative to a witness' admitted use of drugs with Siffert & Sand Sec. § 7-9.1 (318).[2] Counsel likewise requested that the jury be instructed that it must unanimously find an overt act and that at least one overt act be found to have taken place in Brooklyn (Eastern District) (321). The Government disputed that the jury had to find that a charged overt act was committed in Brooklyn (321).

With respect to the issuance of Federal licensing, counsel requested that the Court charge that the Government must prove that the Defendant knew of the license requirement, and engaged in the conduct notwithstanding the need for such a license (323). The Court declined to so charge (323). The Court stated it would charge the jury that with the respect to the overt act requirement, that it would permit the jury to return a conviction under the conspiracy count if it found an "overt act", even one not charged in the indictment (326). Counsel excepted to this determination (327-328).

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[2] Parenthetical references are to the trial transcript.

THE COURT"S CHARGE

The Court instructed the jury on the law, consistent with its indication at the charge conference (329-361). Following the charge as delivered, counsel took proper exception(362).

THE VERDICT

At the conclusion of its deliberations, the jury returned a guilty verdict on both counts. The jury advised the Court that it found an overt act to have occurred within the Eastern District (379).

POST-VERDICT MOTION

Appellant moved, pursuant to Rule 33, to set aside the jury's verdict. Counsel contended that the Court's charge was legally erroneous because it failed to require the Government to prove that Defendant must have known of his need to possess a Federal Firearms Dealers License, and that with respect to venue, that the Court's charge permitted a finding of an Eastern District conspiracy, even if it found the commission of an overt act other than overt act #3. The Court denied the motion.

THE SENTENCE

On June 3, 1996, the Court sentenced BRYAN to serve 57 months imprisonment under the custody of the Attorney General. A timely Notice of Appeal was filed.

THE APPEAL

Petitioner appealed to the Court of Appeals for the Second Circuit. In a February 10, 1996 unreported opinion, which reflected acknowledgement of circuit conflict (see A-2), the Court unanimously affirmed Petitioner's conviction, but acknowledged being bound by prior prevailing circuit case law. The mandate of the Court was filed on March 3, 1997.

REASONS FOR GRANTING THE WRIT

A. THE WILLFULNESS REQUIREMENT

The petition for certiorari should be granted because the decision of the Second Circuit is squarely in conflict with the well-reasoned holdings by sister circuit courts in United States v. Sanchez-Corcino, 85 F.3d 549, 552-554 [11th Cir. 1996]; United States v. Obiechie, 38 F.3d 309, 315-316 [7th Cir. 1994]; United States v. Hayden, 64 F.3d 126, 130 [3rd Cir. 1995].

The Second Circuit, however, adheres to the views set forth in United States v. Collins, 957 F.2d 72, 76 [2nd Cir.] cert. den. 504 U.S. 944 [1992] accord. United States v. Ali, 68 F.3d 1468 [2nd Cir. 1995].

The presence and proof of "mens rea" (vicious will or intent), this Court has held, has been the hallmark of criminal felony level prosecutions (Morissette v. United

States, 342 U.S. 246, 251 72 S.Ct. 240, 96 L.Ed. 288, 294 [1952]; Lambert v. California, 355 U.S. 225, 78 S.Ct. 240, L.Ed.2d 228 [1957]) (prior felon's failure to register if remaining in Los Angeles, California for more than five days invalid, since Defendant probably did not know of registration requirement); LiParota v. United States, 471 U.S. 419, 105 S.Ct. 2084, 85 L.Ed.2d 434 [1985]) (conviction of co-owner of Chicago, Illinois sandwich shop for unlawful possession of food stamps reversed, since although Moon's Sandwich Shop was not authorized by Dept. of Agriculture to accept food stamps, absent proof of said knowledge conviction cannot stand).

More recently, in Staples v. United States, 511 U.S. 600, 114 S.Ct. 1793 [1994], this Court held that the Government was required to prove that in the context of prosecution for unlawful possession of unregistered "firearm" (including machine gun), Defendant knew features and characteristics that make weapon a "firearm" under 26 USC § 5861 (see also United States v. Edwards, 90 F.3d 199, 204 [7th Cir. 1996]; accord Ratzlaff v. United States, 510 U.S. 135, 114 S.Ct. 655, 126 L.Ed.2d 615 [1994] rev'g 976 F.2d 1280 [9th Cir.], wherein prosecution for "structuring" cash currency transactions reversed, absent proof Defendant knew that his conduct violated law which requires that Defendant acted "willfully;" United States v. Curran, 20 F.3d 560, 570 [3rd Cir. 1994].

Finally, we note parenthetically, that there are currently pending petitions for a Writ of Certiorari in Clement v. United States,[3] __U.S.__, 60 Cr. L. Rptr. 3172

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[3] A review of the petition filed in Clement reveals that no objection was taken to Judge Johnson's charge. Accordingly, the issue is reviewable only if cognizable as "plain error."

[Docket # 96-1080] which addresses Section § 922 (a)(5) of Title 18 and Rogers v. United States, __U.S.__, 60 Cr. L. Rpts. 3206 [Docket # 96-1279] involving Court's failure to charge on jury's need to find Defendant knew unregistered and unserialized silencer constituted "firearm" under National Firearms Act (26 U.S.C. 5801-5972). At a time when there is heightened attention to gun trafficking, the need to resolve this conflict is important. In a mobile society, a defendant engaged in conduct in the 3rd, 7th, or 11th Circuit, obtains the benefit of a finding of licensing. Should his case, however, be brought in New York, he will find himself confronted by a United States Attorney who need not prove such knowledge. An issue of this significance ought not turn on which portion of the inter-state national highway system the conduct occurs. The need for national uniformity on this issue is important to gun enthusiasts, law enforcement, and the citizenry as well.

B. **THE OVERT ACT REQUIREMENT**

With the exception of conspiracies to violate the drug laws (see e.g., United States v. Shabani, __U.S.__, 115 S.Ct. 382, 130 L.Ed.2d 255 [1994]) conspiracy prosecutions require both the pleading and proof in the course and furtherance of the conspiracy charged.

In the case at bar, the Court instructed the jury that while it must find at least one overt act, the jury was instructed that in finding an overt act, it was not limited to the overt acts which the Grand Jury voted, and were charged in the indictment.

The effect of this instruction was to permit the jury to find the existence of a conspiracy based upon conduct which might not even constitute an "overt act" or one which was committed in furtherance of the conspiracy or which was not found to be one by the Grand Jury (United States v. Sacco, 436 F.2d 780, 783 [2nd Cir. 1971]).

The legal impact of the finding of an overt act is of great significance. A conspiracy without the commission of an overt act in the furtherance of the conspiracy charged must be found or there can be no conspiracy (United States v. Rabinowich, 238 U.S. 78, 35 S.Ct.682 [1915]; Grunewald v. United States, 353 U.S. 391 77 S.Ct. 963 [1957]; United States v. Grossman, 55 F.2d 408 [1931]). The overt act thus must be one charged, and found to have been committed in the furtherance of the conspiracy (Unitd States v. Sacco, 436 F.2d 780, 783 [2nd Cir. 1971] but C.F. United States v. Lewis, 759 F.2d 1316, 1344 [8th Cir. 1985]; "Modern Federal Jury Instructions," Section § 19-7 [Sand & Siffert]).

The implications of such an expansive instruction[4] in one fell swoop enlarged the law of conspiracy beyond the wildest dreams of prosecutors (and nightmares of defense counsel), and deprived Defendant of a fair trial.

In denying relief, the Court relied upon its prior holding in United States v. Armone, 363 f.2d 385, 400 [2nd Cir. 1966], an opinion by former Chief Judge Feinberg, involving a prosecution for narcotics law violations. Since such prosecutions

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[4] Since proper requests and exceptions were lodged, application of the "Plain Error" role does not apply (C.F. United States v. Olano, 507 U.S. 725, 730-732, 113 S.Ct. 1770, 1776, 123 L.Ed.2d 508 [1993]).

do not require overt acts, the case is clearly distinguishable, but c.f. Yates v. United States, 354 U.S. 298, 334 77 S.Ct. 1064, 1085 [1957].

C. **THE FAILURE TO INSTRUCT ON WITNESS' DRUG USE**

The instant prosecution was built upon an evidentiary foundation of two self-confessed accomplices, Columbus, Ohio natives NICOLE BRADLEY and DELORAS TILLMAN. Both women, substantially older than the teen-aged SILLASSE BRYAN, acknowledge entering a number of Columbus, Ohio licensed gun retailers, to purchase pistols for cash. Both women acknowledge making multiple false statements upon pistol purchase applications and thereby intentionally misleading the vendors as to their legal eligibility to purchase guns. Moreover, each was substantially immersed in drug use and/or drug trafficking involvement which was overlooked by the Government in exchange for their testimonial cooperation.

Against the aforementioned backdrop, defense counsel submitted request to charge which, if incorporated in the Court's charge, would have alerted the fact-finders to the effect that their drug use and interest in the outcome of the case against Appellant should be viewed. Although JUDGE TRAGER gave general instructions relative to the determination of witness credibility (see T-0337-342). However, the Court's failure to include a specific instruction that Ms. BRADLEY and Ms. TILLMAN were interested witnesses as a matter of law, and that witness' drug use required particular juror scrutiny, undercut the credibility weighing tools

desperately needed by the jurors to arrive at a proper verdict (see "Modern Federal Instructions," Section § 7-9.1 (Sand & Siffert); United States v. Pagano, 207 F.2d 884, 885 [2nd Cir. 1953]; c.f Caminetti v. United States, 242 U.S. 470, 37 S.Ct. 192, 198 [1917).

This Court should grant this petition to provide definitive guidance to the Trial Courts of this nation in this most important area. Clearly generalized credibility instructions are insufficient to provide proper guidance to lay jurors.

CONCLUSION

FOR THE FOREGOING REASONS, THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

Dated: New York, New York
March 27, 1997

Respectfully submitted:

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ROGER BENNET ADLER
Of Counsel

APPENDIX

EDNY-bkny
95-cr-765
Trager

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 10th **day of** February **one thousand nine hundred and ninety-seven.**

PRESENT: **Honorable John M. Walker, Jr.,**
Honorable Fred I. Parker,
Honorable Gerald W. Heaney,*

Circuit Judges.

- -

UNITED STATES OF AMERICA,

Appellee,

-- v. -- **96-1450**

SILLASSE BRYAN, aka "Uzi,"

Defendant-Appellant.

- -

APPEARING FOR DEFENDANT-APPELLANT: **Roger Bennet Adler, New York, New York.**

APPEARING FOR APPELLEES: **Elaine D. Banar, Assistant United States Attorney, Eastern District of New York, Brooklyn, New York.**

Appeal from an order of the United States District Court for the Eastern District of New York.

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* Hon. Gerald W. Heaney of the United States Court of Appeals for the Eighth Circuit sitting by designation.

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This cause came to be heard on the transcript of record from the United States District Court for the Eastern District of New York (David G. Trager, Judge) and was argued.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the order of the United States District Court for the Eastern District of New York is **AFFIRMED.**

Sillasse Bryan appeals from a judgment of conviction of the United States District Court for the Eastern District of New York. Bryan was convicted on July 3, 1996, after a jury trial, of conspiring to engage in the sale of firearms without a license as well as actually engaging in the sale of firearms without a license in violation of 18 U.S.C. §§ 371, 922(a)(1)(A). Judge Trager sentenced Bryan to a term of 57 months in prison and to supervision upon release for three years.

Bryan seeks reversal of his conviction on three grounds: first, that jury had before it insufficient evidence upon which to convict him of the violations charged; second, that the court erred in failing to charge the jury properly with respect to the credibility of certain witnesses for the government; and, third, that the court erred in instructing the jury that an overt act not set forth in the indictment may constitute an act in furtherance of a conspiracy under 18 U.S.C. § 371. Each of these claims is without merit.

Bryan's first contention is that the jury had insufficient evidence on which to convict him of the willfulness necessary under 18 U.S.C. § 921(a)(1). Defendant's argument, however, rests on a misunderstanding of the law of this circuit. The willfulness element of unlawful sale of firearms does not require proof "that defendant had specific knowledge of the statute he is accused of violating, nor that he had specific intent to violate the statute." See United States v. Ali, 68 F.3d 1468, 1473 (2d Cir. 1995). Rather, this circuit reads the willfulness requirement more "broadly requir[ing] only that the government prove that the defendant's conduct was knowing and purposeful and that the defendant intended to commit an act which the law forbids." United States v. Collins, 957 F.2d 72, 76 (2d Cir. 1992). Thus, while we acknowledge that several of our sister circuits have construed the law more narrowly, see, e.g., United States v. Sanchez-Corcino, 85 F.3d 549, 553 (11th Cir. 1996) (holding that "in order for the Government to prove the offence of willfully dealing in firearms without a license . . . it must prove that the defendant acted with knowledge of the licensing requirement"), defendant's argument for such a construction of the law in this circuit is foreclosed.

With the proper understanding of the requirement of willfulness in this circuit, defendant's insufficiency argument is unavailing. It is axiomatic that a defendant faces a heavy

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burden when challenging the sufficiency of the evidence to support a jury's verdict. See United States v. Soto, 716 F.2d 989, 991 (2d Cir. 1983). In passing on such a challenge, the court views the evidence in the light most favorable to the government. Jackson v. Virginia, 443 U.S. 307, 319 (1979). At trial, the government elicited ample proof that defendant's conduct "was knowing and purposeful" and that he "intended to commit an act which the law forbids." United States v. Collins, 957 F.2d at 76. In brief, the government established that Bryan made several trips from his home in New York City to Ohio for the purpose of purchasing firearms that he was unable to obtain legally in New York; that he enlisted the aid of two Ohio women to purchase the firearms on his behalf, knowing that in Ohio purchase was possible with an in-state driver's license alone; that he provided the women the funds to purchase the guns and accompanied them to the dealer; that Bryan confessed to purchasing firearms in Ohio with the intention of transporting them to New York for resale; and, most important, that defendant removed the serial numbers of the firearms purchased to avoid detection. Viewed in the light most favorable to the government, this evidence is sufficient to establish that Bryan knowingly intended to commit an act which the law forbids. Id.

Defendant's second argument on appeal concerns the court's instructions regarding the credibility of two of the government's witnesses, women who aided Bryan in purchasing firearms during his trips to Ohio. As an initial matter, we note that defendant's counsel failed to object to the credibility charge given by the district court. Joint Appendix 128-29. Thus, notwithstanding the inclusion of the sought after charge in defendant's proposed instruction submitted to the court, we review for plain error. See United States v. Locascio, 6 F.3d 924, 942 (2d Cir. 1993). Accordingly, we will reverse only "in those circumstances in which a miscarriage of justice would otherwise result." Id. at 942 (quotations omitted). Here no such error occurred. Defendant sought an instruction (1) that would have specifically informed the jury that both the witnesses were drug abusers and that they were abusing drugs at the time certain events at issue allegedly occurred and (2) that the witnesses were interested in the outcome of the trial. See Defendant-Appellant's Brief at 24-25.

As to the proposed drug abuse charge, the district court did not err in refusing to accept it as there was contradictory evidence on the matter with respect to one of the witnesses at issue. See United States v. Lam Lek Chong, 544 F.2d 58, 68 (2d Cir. 1976) (finding that a requested charge "must be accurate in every respect before a trial judge is held in error for refusing it") (quotations omitted), cert. denied, 429 U.S. 1101 (1977). Even were this not the case, we cannot conclude that the district court's refusal of this instruction was plain error. As to the credibility instruction, the district court

took care to instruct the jury of the dangers inherent in accomplice testimony and of the need to give the two witnesses' testimony special attention because both had entered into cooperation agreements with the government. Thus, defendant's argument in this regard is meritless.

Finally, defendant argues that the district court erred in charging the jury that an overt act not included in the indictment can constitute the foundation of a conspiracy conviction. Defendant's argument fails. The court has specifically held that a conspiracy "conviction may rest on an overt act not charged in the indictment." United States v. Armone, 363 F.2d 385, 400 (2d Cir. 1966) (Feinberg, C.J.).

For the foregoing reasons, we find defendant's arguments to be without merit. Accordingly, we affirm the judgment of the district court.

Hon. John M. Walker, Jr., U.S.C.J.

Hon. Fred I. Parker, U.S.C.J.

Hon. Gerald W. Heaney, U.S.C.J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

EDNY-bkny
95-cr-765
Trager

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 10th day of February one thousand nine hundred and ninety-seven.

PRESENT: Honorable John M. Walker, Jr.,
Honorable Fred I. Parker,
Honorable Gerald W. Heaney,*

Circuit Judges.

- -

UNITED STATES OF AMERICA,

Appellee,

-- v. -- 96-1450

SILLASSE BRYAN, aka "Uzi,"

Defendant-Appellant.

- -

APPEARING FOR DEFENDANT-APPELLANT: Roger Bennet Adler, New York, New York.

APPEARING FOR APPELLEES: Elaine D. Banar, Assistant United States Attorney, Eastern District of New York, Brooklyn, New York.

Appeal from an order of the United States District Court for the Eastern District of New York.

---

* Hon. Gerald W. Heaney of the United States Court of Appeals for the Eighth Circuit sitting by designation.

96-8422

SUPREME COURT OF THE UNITED STATES

SILLASSE BRYAN,
Petitioner,

-against-

UNITED STATES OF AMERICA,
Appellee,

AFFIDAVIT OF SERVICE
Docket No.: 96-

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

ROGER BENNET ADLER, being duly sworn, deposes and says:

I am a member of the bar of this Court, not a party to the within action, am over eighteen years of age and reside in Brooklyn, New York.

On the 26th day of March, 1997, I served the within Writ of Certiorari for defendant, Sillasse Bryan, on:

Asst. U.S. Atty Elaine Banar
c/o United States Attorney's Office
225 Cadman Plaza East
Brooklyn, New York 11201

Office of The Solicitor General
c/o Department of Justice
Constitution Avenue & 10th Street, N.W.
Washington, D.C. 20530

by depositing a true copy of same enclosed in a pre-paid properly addressed first class envelope wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

ROGER BENNET ADLER

Sworn to before me this
27th day of March, 1997

NOTARY PUBLIC

MARILYN MARAS
COMMISSIONER OF DEEDS
CITY OF NEWYORK 64-0193
CERTIFICATE FILED IN NEWYORK COUNTY
COMMISSION EXPIRES OCTOBER 3, 1998

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

96-96-8422

SILLASSE BRYAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

MOTION TO PROCEED IN FORMA PAUPERIS
AND FOR ASSIGNMENT OF COUNSEL

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

SILLASSE BRYAN,

Petitioner,

v.

96-96-8422

UNITED STATES OF AMERICA,

Respondent.

MOTION TO PROCEED IN FORMA PAUPERIS
AND FOR ASSIGNMENT OF COUNSEL

Petitioner, SILLASSE BRYAN, respectfully requests this Honorable Court to grant leave to continue his counsel appointed pursuant to the Criminal Justice Act, and waive the Court's regular filing fees.

FACTUAL BACKGROUND

Petitioner was charged pursuant to indictment number 95 Cr. 765 (S-1) (DGT) with a violation of 18 U.S.C. 371 and 922 (a)(1)(A) and has been continuously represented by Court appointed counsel pursuant to the terms of Criminal Justice Act since his initial appearance in the United States District Court for the Eastern District

of New York. By order of Judge David G. Trager dated August 14, 1995, ROGER BENNET ADLER was assigned as counsel to represent petitioner.

Mr. Adler's appointment was later continued by the United States Court of Appeals for the Second Circuit. During the course of perfecting the direct appeal (Docket #96-1450, Petitioner has been under the custody of the Federal Bureau of Prisons, and currently remains incarcerated at Allenwood Prison Camp in the State of Pennsylvania. Upon information and belief, he has not received any income from any source since the initial appointment of counsel back in 1995.

WHEREFORE, the Petitioner respectfully prays that the motion at bar be GRANTED, Petitioner permitted to proceed in forma pauperis with all filing fees and regular certiorari petition printing requirements waived, and ROGER BENNET ADLER, a member of this Court, having been admitted to practice on December 9, 1974, continued as Court appointed counsel under the terms and conditions of the Criminal Justice Act.

Dated: New York, New York
March 27, 1997

Respectfully submitted:

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Attorney for Petitioner
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